

## Expansion & Access Grant Program Application Terms and Conditions

This Expansion & Access Grant Program Provider Agreement is made by and between the North Carolina Department of Health and Human Services, Division of Child Development and Early Education ("Division") and the Child Care Program, as that term is hereinafter defined, and whose name and signature appears below in the signature block ("Agreement").

This Agreement governs the relationship between the Division and the Child Care Program that receives dollars in accordance with the approved Expansion & Access Grant Program Provider Application ("Application"), funded by the State Fiscal Recovery Fund [S.L. 2021-180]. The Division and Child Care Program agree as follows:

### I. Definitions:

- A. **"Application"** means the Expansion & Access Grant Program Current Provider Application, as issued by the Division and which may be updated from time to time, or Expansion & Access Grant Program New Provider Application, as issued by the Division and which may be updated from time to time, whichever is applicable.
- B. **"Child Care Program"** means the entity that submits and affirms to the Application and receives State Fiscal Recovery Funds pursuant to the Application.
- C. **"State Fiscal Recovery Funds"** means all amounts received by the Child Care Program from the Division to spend in accordance with the approved Application, this Agreement, and S.L. 2021-180, Section 9C.9.
- D. **"Quarter"** or **"Quarterly"** means each three month period beginning on January 1, April 1, July 1 and October 1 in each calendar year.

### II. Terms and Conditions:

- A. **Access to Persons and Records.** The North Carolina State Auditor shall have access to persons and records as a result of all contracts or grants entered into by States agencies or political subdivisions in accordance with General Statute § 147-64.7. Additionally, as the State funding authority, the North Carolina Department of Health and Human Services shall have access to persons and records as a result of all contracts or grants entered into by State agencies or political subdivisions.
- B. **Availability of Funds.** Any and all payments to the Child Care Program are dependent upon and subject to the availability of State Fiscal Recovery Funds to the Division for the purpose set forth in this Agreement. There is a risk that State Fiscal Recovery Funds might be depleted prior to or during the Application and approval process for this Agreement. The Division shall not be bound to pay any amount to the Child Care Program should State Fiscal Recovery Funds be depleted prior to issuing the payment to the Child Care Program under this Agreement, and the Division makes no guarantee that any portion of the State Fiscal Recovery Funds will be available despite the Child Care Program otherwise qualifying for them.

### C. Payment Provisions:

- i. Subject to the continuing availability of State Fiscal Recovery Funds, the Division shall disburse a one-time payment of State Fiscal Recovery Funds ("Initial Payment") to the Child Care Program within forty-five (45) days of the Effective Date of this Agreement, as that term is hereinafter defined.
- ii. Payment to the Child Care Program will not be made until (a) the Division approves the Child Care Program's Application **and** (b) the Child Care Program agrees to comply with these Terms and Conditions by clicking "I Agree" and submitting an electronic signature of someone authorized to bind the Child Care Program. The Division will not make a payment

before steps ii(a) and ii(b) are both complete. The later date of the date of ii(a) or ii(b) shall be the Effective Date of this Agreement.

- iii. The Child Care Program shall use the State Fiscal Recovery Funds exclusively for **(1) start-up costs associated with establishing a new NC Pre-K classroom or child care facility; (2) quality improvements for existing NC Pre-K classrooms or child care facilities that increase the classroom or facility's capacity or upgrade its star rating; or (3) capital improvements or renovations, including adding or upgrading outdoor play and learning environments, or increasing a facility's total capacity**, as detailed in the Application submitted by the Child Care Program, and approved by the Division. The Child Care Program's Application is incorporated by reference herein as if fully restated. Any applicant who is unlicensed at the time of submitting the Application and applies for State Recovery Funds to establish a new NC Pre-K classroom or child care facility must be licensed by the Division, have completed construction, and be ready to accept children for care on or before December 31, 2024.
  - iv. Any applicant that applies for State Recovery Funds for quality improvements or capital improvements or renovations must be licensed by the Division when the Application is submitted to the Division. Any unlicensed program that attempts to apply for funds pursuant to Section II.C.iii.2 or II.C.iii.3, above, shall have their Application denied.
  - v. The Child Care Program must expend all State Fiscal Recovery Funds before September 30, 2026.
  - vi. As requested and communicated by DCDEE, the Child Care Program shall provide invoice(s), receipt(s), and any other documentation reasonably required by the Division to prove that the Child Care Program spent the State Fiscal Recovery Funds as detailed in the Application.
  - vii. In the event that the Child Care Program spends the State Fiscal Recovery Funds, or any portion thereof, on item(s) that are not in accordance with the Application or this Agreement, the Child Care Program shall reimburse the Division for the amounts of the non-qualifying purchase(s) within ninety (90) business days from the date of the purchase.
  - viii. The Division may require the return of the State Fiscal Recovery Funds if Child Care Program fails to comply with all terms, conditions, and provisions of this Agreement.
- D. **Updates and Proof of Expenditures.** Every one hundred eighty (180) days after receipt of the one-time payment, the Child Care Program shall provide the Division with current information on the program's use of the funds on a form provided by the Division. The Child Care Program shall provide invoice(s), receipt(s), and any other documentation reasonably required by the Division to demonstrate that Child Care Program spent the State Fiscal Recovery Funds as detailed in the Application.
- E. **No Warranty by Division.** The Division is solely providing State Fiscal Recovery Funds for the Child Care Program's expenditures in accordance with the Application, this Agreement, and has no other obligation to the Child Care Program. The Division does not guarantee or warrant any purchases against defects, damages, or injury. The Child Care Program shall be solely responsible for selecting appropriate items for purchase. The Child Care Program shall not seek any warranty claims or claims from the State of North Carolina, DHHS, the Division or its/their employees or agents.
- F. **Release and Indemnification.** The Child Care Program releases the State of North Carolina, DHHS, the Division, its and their agents and employees, from, agrees that neither they nor any of them shall have any liability for, and agrees to defend, indemnify and save harmless the State of North Carolina, DHHS, the Division, its and their agents and employees, or any of them from and against, any and all liabilities, suits, actions, claims, demands, losses, expenses and costs of every kind and nature incurred by or asserted or imposed against them or any of them as a result of or in connection with this Agreement.
- G. **Compliance with Laws, including EEO.** Child Care Program shall comply with all laws, ordinances, codes, rules, regulations, and licensing requirements, including but not limited to laws

relating to equal employment opportunity, including those of federal, state, and local agencies having jurisdiction and/or authority.

- H. **Governing Law:** The Agreement will be governed by and interpreted in accordance with the laws of the State of North Carolina, without regard to conflicts of law principles. The state courts located within Wake County, North Carolina will have exclusive jurisdiction and venue to adjudicate any dispute arising out of or related to the Agreement.
- I. **Independent Contractor.** The parties will act as independent contractors. Neither party will act as, or be deemed to be, an agent for or partner of the other party for any purpose nor will either party have the authority to bind the other.
- J. **No Advertising.** The Child Care Program shall not use the award of this Agreement as a part of any news release, publication, or commercial advertising without the prior, express written consent of the Division.
- K. **Notices.** All notices, reports and other communications required or permitted to be made with respect to this Agreement will be given in writing
- L. **Record Retention.** The Child Care Program agrees to maintain all records relating to the performance of this Agreement for a minimum of seven (7) years from the date of this Agreement, or for a longer period as may be required under law.
- M. **Severability.** If a court of competent authority holds that a provision or requirement of this Agreement violates any applicable law, each such provision or requirement shall be enforced only to the extent it is not in violation of law or is not otherwise unenforceable and all other provisions and requirements of the Agreement shall remain in full force and effect.
- N. **Survival.** All provisions of the Agreement that by their nature are intended to survive termination or expiration of this Agreement shall so survive.
- O. **Amendment.** This Agreement, or any part, may not be amended except in writing executed by the parties.
- P. **Assignment.** Without the prior written approval of the Division, the Child Care Program may neither assign all or any of the benefits of, nor delegate all or any of the duties imposed by, this Agreement.
- Q. **Default and Remedies Upon Default.** A default shall consist of any breach of any of the Child Care Program's covenants, agreements, warranties or certifications in this Agreement. Upon the occurrence of any default as described herein, the Division shall have the right to terminate this Agreement by written notice to the Child Care Program. In the event of termination, the Child Care Program shall be obligated to repay to the Division within thirty (30) days of receipt of written notice of default, all State Fiscal Recovery Funds which have been disbursed to the Child Care Program.
- R. **All Waivers must be in Writing.** The failure of either party to insist upon strict performance of any provision of the Agreement, or to exercise any right provided for herein, shall not be deemed to be a waiver for the future of such provision or right, and no waiver of any provision or right shall affect the right of the waiving party to enforce any provision or right herein.